

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

IN RE: )  
 )  
JEFFREY ALAN BERKMAN, ) CASE NO. 10-22062 JPK  
 ) Chapter 13  
Debtor. )

ORDER INVALIDATING NOTICE/DISMISSING EMERGENCY  
MOTION TO DISMISS PER 11 U.S.C. § 1307 AND/OR GRANTING  
CREDIT UNION ADEQUATE PROTECTION PENDING THE  
SALE OF PROPERTY PER 11 U.S.C. § 363(e) ("MOTION")

The Motion was filed on May 4, 2011 by Midwest Carpenters & Millwrights Federal Credit Union, and was accompanied by a Notice of Motion in the form provided for by N.D.Ind.L.B.R. B-2002-2. As its caption states, the Motion requests dismissal of the debtor's Chapter 13 case, and alternative relief of adequate protection.

First, the relief requested by the Motion is not within the parameters of N.D.Ind.L.B.R. B-2002-2, and can therefore not be effected pursuant to a "drop dead" procedure. The Notice of Motion included in record entry #107 is void.

Next, the Motion seeks alternative forms of relief contrary to applicable law. The Motion initiates a contested matter pursuant to Fed.R.Bankr.P. 9014. Sub-paragraph (c) incorporates certain provisions of other rules into proceedings under Rule 9014. Noticeably absent from this incorporation is Fed.R.Bankr.P. 7018, which itself refers to Fed.R.Civ.P. 18. Fed.R.Civ.P. 18 is the only federal rule which allows a joinder of claims in the same proceeding, and the failure of Fed.R.Bankr.P. 9014 to incorporate Fed.R.Bankr.P. 7018 into contested matters makes clear the fact that a contested matter is a matter solely requesting a single form of relief, and not alternative forms of relief. This prohibition is reflected in N.D.Ind.L.B.R. B-9013-1, which requires motions seeking alternative forms of relief in contested matters to be separately filed with respect to the separate ground for the contested matter.

IT IS ORDERED as follows:

A. The Notice of Motion is void, and is ineffective for any purpose.

B. The Motion itself is dismissed, without prejudice.<sup>1</sup>

Dated at Hammond, Indiana on May 25, 2011.

/s/ J. Philip Klingeberger  
J. Philip Klingeberger, Judge  
United States Bankruptcy Court

Distribution:

Debtor, Attorney for Debtor  
Trustee, US Trustee  
Attorney for Creditor

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<sup>1</sup> The court also notes that the Motion was entitled as an "Emergency" motion. There is nothing whatsoever in the Motion that indicates there is an emergency in relation to the relief requested by it. Counsel is advised to limit the term "emergency" in the caption of a motion to those circumstances in which applicable law deems an expedited hearing procedure to be appropriate.